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FISH & RICHARDSON P.C.
225 FRANKLIN STREET
BOSTON, MA 02110-2804

In re Application of : DECISION ON
HÖSS, Wolfgang :
Application No.: 10/554,970 :
PCT No.: PCT/EP04/01615 : PETITION
Int. Filing Date: 19 February 2004 :
Priority Date: 28 April 2003 : UNDER 37 CFR 1.47(b)
Attorney's Docket No.: 14603-016US1 P2003,0256US :
For: Flip-Flop Circuit Assembly :

This is a decision on applicant's "Renewed Petition Under 37 C.F.R. 1.47(b) To Proceed Without Signature Of The Sole Inventor," filed in the United States Patent and Trademark Office on 01 August 2007, on behalf of the assignee and the non-signing inventor Wolfgang Höss.

BACKGROUND

On 19 February 2004, applicant filed international application PCT/EP04/01615, claiming a priority date of 28 April 2003. The thirty-month period for paying the basic national fee in the United States expired at midnight on 28 October 2005.

On 27 October 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied, *inter alia*, by the requisite basic national fee.

On 05 September 2006, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 05 February 2007, applicant submitted the declaration, the surcharge for late filing of the declaration, a three-month extension fee, a petition under 37 CFR 1.47(b) requesting acceptance of the application without the signature of the applicant and, a "Statement of Facts" to support the petition.

On 01 June 2007, the Office mailed "Decision on Petition under 37 CFR 1.47(b)" dismissing applicants' petition without prejudice. The Decision stated that the evidence provided was not sufficient to support the conclusion that the invention was made by Mr. Wolfgang Höss while employed by the 37 CFR 1.47(b) applicant.

On 01 August 2007, applicant filed the instant renewed petition under 37 CFR 1.147(b) on behalf of the assignee and the non-signing inventor Wolfgang Höss including, a declaration by Mr. Bernd Gessner, General Manager of the Automotive Business Unit of the assignee.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

With the filing of applicant's renewed petition, applicant has satisfied items (1) through (6) above. The declaration of Mr. Bernd Gessner, General Manager of the Automotive Business Unit of the assignee, is a statement by a person having firsthand knowledge that the invention described in the instant application was made by Mr. Wolfgang Höss while employed by the 37 CFR 1.47(b) applicant. Together with the employment agreement of Mr. Wolfgang Höss, filed on 05 February 2007, the declaration of Mr. Bernd Gessner is sufficient evidence to support the conclusion that the invention described in the instant application was made by Mr. Wolfgang Höss while employed by the 37 CFR 1.47(b) applicant.

Hence, based on the totality of the evidence currently of record, it is appropriate to consider the requirements of 37 CFR 1.47(b) to have been satisfied.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(b) is **GRANTED**.

This application has an International Filing Date of 19 February 2004 and a date under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) of 05 February 2007.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

As provided in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the non-signing inventors at their last known address of record.

A notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.



Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration



Stefan Staicovici
PCT Legal Examiner
Office of PCT Legal Administration
Telephone: (571) 272-1208
Facsimile: (571) 273-0459